

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
VALDOSTA DIVISION**

RUSSELL BAKER,

Plaintiff

VS.

LT. ROBERT PICCIOTTI,

Defendant.

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Case No. 7 : 06-CV-86 (HL)

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**RECOMMENDATION**

The plaintiff filed this action in September 2006, challenging certain conditions of his confinement. Since filing a response to defendant's Motion to Dismiss in March 2008 and a change of address notification in April 2008, the plaintiff has taken no action in this matter and has had no contact with the court. Based on the record of inactivity herein, the court issued a show cause order on October 2, 2009, directing the plaintiff to show cause as to why this case should not be dismissed for his failure to diligently prosecute this lawsuit. See Fed. R. Civ. P. 41(b). The plaintiff has failed to respond to the court's directive.

Under Rule 41(b) of the Federal Rules of Civil Procedure, a case may be dismissed upon a determination of a "clear record of delay or willful contempt and a finding that lesser sanctions would not suffice." Goforth v. Owens, 766 F.2d 1533, 1535 (11th Cir. 1985). Litigants proceeding *pro se* are not exempted from this requirement of diligent prosecution. Moon v. Newsome, 863 F.2d 835 (11th Cir. 1989). The court's inherent power to dismiss cases in which the plaintiff has failed to diligently prosecute his action "is necessary in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars of the District Courts." Link v. Wabash R.R.,

370 U.S. 626, 630 (1962).

A review of this entire action reveals a clear record of delay or willful contempt on the part of the plaintiff. More than one (1) year has elapsed since the plaintiff's last contact with the court. Inasmuch as the plaintiff has failed to respond to the court's show cause order and has failed to proceed in any substantive way with the litigation of this lawsuit in the last year, it is the recommendation of the undersigned that this action be **DISMISSED**. Pursuant to 28 U.S.C. § 636(b)(1), the parties may file written objections to this recommendation with the Honorable Hugh Lawson, United States District Judge, **WITHIN TEN (10) DAYS** of receipt thereof.

**SO RECOMMENDED**, this 9<sup>th</sup> day of November, 2009.

**S/G. MALLON FAIRCLOTH**  
**UNITED STATES MAGISTRATE JUDGE**

asb